


8 September 1976

STATINTL

NOTE FOR: Mr. Knoche 

SUBJECT: Paramilitary Activities Under the
War Powers Resolution

1. The War Powers Resolution passed over a Presidential veto on 7 November 1973. Attached is an OGC opinion dated 13 August 1975 to the effect that it does not apply to paramilitary activities. The opinion points out that a Senate amendment (Eagleton) which would have broadened the Resolution to include such activities was defeated.

2. As a practical matter, Section 662 of the Foreign Assistance Act has nearly the same restricting effect on the Executive's freedom to use paramilitary activities as would have the defeated Senate amendment. Section 662 requires a Presidential Finding of importance to the national security and reporting to the appropriate Congressional committees for activities other than those solely to obtain necessary intelligence. If Congress disagrees with the wisdom or need for an activity which is reported pursuant to Section 662 the procedures for remedying the situation may not be as well defined as they are in the War Powers Resolution, but that would be only a temporary impediment to some action on its part.

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Attachment:
OGC 75-2942

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OGC 75-2942

13 August 1975

MEMORANDUM FOR: General Counsel

SUBJECT : Paramilitary Activities Under the War Powers Act

1. The War Powers Act, which became effective on 7 November 1973, requires Presidential consultation with Congress before the commitment of U.S. Armed Forces into hostilities and Presidential reporting to Congress following such a commitment, Public Law 93-148, 87 Stat. 555. Specifically, the Act provides in section 3 that

... (t)he President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations. (emphasis added)

Once the President, without a declaration of war or other prior congressional authorization, takes significant action committing U.S. Armed Forces into hostilities abroad or places substantially increased U.S. combat forces on foreign territory, the Act further requires that he report to Congress within 48 hours. Thereafter, the President must terminate the use of United States Armed Forces if Congress so orders or if Congress fails to act within 120 days.

2. The Act was conceived in the aftermath of the Cambodian incursion, and its purpose is to curb unauthorized Presidential war-making. It clearly does not apply to paramilitary activities or other covert action. The Act literally refers to "Armed Forces," and this term was taken in congressional debate to mean conventional military units and uniformed personnel. Moreover, an amendment which would have broadened the Act to cover paramilitary activities of the type undertaken by the CIA in Laos was offered by Senator Eagleton and was soundly rejected by a vote of 53 to 34, Amendment 366 to S-440. Under that amendment, the War Powers Act would have covered

... (a)ny personnel employed by, under contract to, or under the direction of any department or agency of the U.S. government either

- (a) actively engaged in hostilities in any foreign country; or
- (b) advising any regular or irregular military forces engaged in hostilities in any foreign country.

It should be noted, however, that a bill which includes the same language was introduced on May 21, 1975, (S-1790) by Senator Eagleton and is now pending before the Senate Foreign Relations Committee.

3. Even if the War Powers Act were amended to cover paramilitary activities, the Act would not, as it could not, alter any inherent constitutional power of the President to commit United States forces, official or otherwise, into foreign hostilities. Recognizing the potential for constitutional problems with the Act, Congress specifically provided in section 8 of the Act that nothing in it

... is intended to alter the constitutional authority ... of the President, or the provisions of existing treaties

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Office of General Counsel

cc: SC/DCI

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